

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD SANDERSON,) No. C 12-01595 EJD (PR)
Petitioner,) ORDER DENYING MOTION TO
v.) ALTER OR AMEND JUDGMENT
CONNIE GIPSON, Warden,)
Respondent.)
_____) (Docket No. 29)

Petitioner, a California inmate, filed a petition in pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction on the grounds that counsel at his resentencing hearing was ineffective for failing to obtain and present mitigating evidence, including the recent discovery that Petitioner possibly suffers from Fetal Alcohol Syndrome (“FAS”) or Fetal Alcohol Spectrum Disorder (“FASD”), that Petitioner had an unstable childhood because his parents were drug addicts and his father had been physically abusive, and that as a result of the foregoing, Petitioner suffers from depression. On July 23, 2014, the Court denied the petition on the merits and denied a certificate of appealability. (Docket No. 27.)

Petitioner has filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 52(e), on the grounds that the Court erroneously determined

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1 that the facts from the probation officer's report were undisputed. (Docket No. 29 at
2 1.) Petitioner also claims that the Court also did not consider other significant
3 mitigating evidence that he suffers from physical, mental and emotional disability
4 which explains his prior juvenile offenses and his reckless conduct in the underlying
5 conviction. (Id. at 4.) In this regard, Petitioner repeats the assertions from his
6 petition that the possibility that he suffers from FAS was a significant mitigating
7 circumstance which counsel failed to present and which ultimately prejudiced
8 Petitioner. (Id. at 5-8.)

9 Where the court's ruling has resulted in a final judgment or order (e.g., after
10 dismissal or summary judgment motion), a motion for reconsideration may be filed
11 under Rule 59(e) (motion to alter or amend judgment). Motions for reconsideration
12 should not be frequently made or freely granted; they are not a substitute for appeal
13 or a means of attacking some perceived error of the court. See Twentieth Century -
14 Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981).

15 A motion for reconsideration under Rule 59(e) “should not be granted,
16 absent highly unusual circumstances, unless the district court is presented with
17 newly discovered evidence, committed clear error, or if there is an intervening
18 change in the law.”” McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999)
19 (citation omitted) (en banc). Petitioner’s motion for reconsideration is not based on
20 newly discovered evidence or an intervening change in the law. Petitioner asserts
21 that the Court’s reliance on the facts taken from the probation officer’s report was
22 erroneous. However, the facts of the underlying conviction had little or no bearing
23 on the merits of Petitioner’s ineffective assistance of counsel claim, and were merely
24 presented in the Court’s Order as background information. Furthermore, Petitioner
25 contends that the Court erred in failing to consider all of the mitigating evidence
26 which counsel omitted at his resentencing hearing. A district court does not commit
27 clear error warranting reconsideration when the question before it is a debatable one.
28 See id. at 1256 (district court did not abuse its discretion in denying reconsideration

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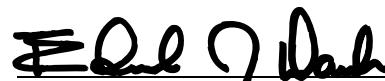
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1 where question whether it could enter protective order in habeas action limiting
2 Attorney General's use of documents from trial counsel's file was debatable). The
3 question of the effect of Petitioner *possibly* suffering from FAS or FASD or other
4 physical, emotional or mental disability on the duration of his sentence is debatable,
5 and therefore it cannot be said that this Court committed clear error warranting
6 reconsideration. Furthermore, as the Court stated in its order denying the petition,
7 there is no clearly established Supreme Court precedent governing ineffective
8 assistance of counsel claims in the context of noncapital sentencing. (Docket No. 27
9 at 6, citing Cooper-Smith v. Palmateer, 397 F.3d 1236, 1244 (9th Cir.), cert. denied,
10 546 U.S. 944 (2005).) Accordingly, it cannot be said that the Court committed clear
11 error in finding that the state appellate court's rejection of Petitioner's claim was
12 contrary to, or involved an unreasonable application of, clearly established Federal
13 law where no such law exists. 28 U.S.C. § 2254(d)(1); see Davis v. Grigas, 443
14 F.3d 1155, 1158-59 (9th Cir. 2006); Cooper-Smith, 397 F.3d at 1244-45.

15 Petitioner is advised that he may seek a certificate of appealability with the
16 United States Court of Appeals for the Ninth Circuit to appeal this matter. See
17 United States of Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

18 This order terminates Docket No. 29.

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20 DATED: 10/3/2014


EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICHARD SANDERSON,

Case Number: CV12-01595 EJD

Petitioner,

CERTIFICATE OF SERVICE

v.

CONNIE GIPSON, Warden,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/3/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Richard Sanderson F-43953
Corcoran State Prison
P. O. Box 3481
Corcoran, CA 93212

Dated: 10/3/2014

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk